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March 23, 1961  
Opinion No. 61-17

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ARIZONA ATTORNEY GENERAL

REQUESTED BY: Honorable George M. Ireland  
Yavapai County Attorney

OPINION BY: ROBERT W. PICKRELL, The Attorney General

FACTS: The County Assessors of the State of Arizona desire to be advised concerning the assessment of oil, gas and minerals or mineral rights that have been severed from the surface ownership either through a reservation or exception in a deed, or by mineral deed. The oil, gas and minerals are non-producing.

QUESTIONS:

1. As a part of the duties of his office, is the County Assessor required to separately assess such severed mineral right regardless of whether the surface or mineral owner make such a request to the Assessor?
2. If the Assessor is not required, as a part of the duties of his office, to separately assess any severed gas, oil and mineral rights, can the surface owner require the Assessor to separately assess such ownership rights belonging to another person?
3. Can the owner of severed oil, gas and minerals or mineral rights require the Assessor to separately assess such property in his own name?

CONCLUSIONS:

1. Yes.
2. Answered by Conclusion #1.
3. Yes, but this is essentially a procedural matter in requiring the Assessor to separately assess upon which an owner should obtain private legal advice.

All property in Arizona shall be subject to taxation (A.R.S. §42-202), except as provided in the exemption statute (A.R.S. §42-271). The county assessor shall list and assess the property to the person owning, claiming or having possession, charge or control thereof (A.R.S. §42-221), and all taxable property shall be assessed at its full cash value (A.R.S. §42-227).

By virtue of the above statutes it would appear that if mineral rights are property, then such rights are subject to taxation. That a "mineral right" is property seems quite clear:

"\*\*\*\*\* after the mineral is conveyed apart from the land, or vice versa, two separate estates exist, each of which is distinct from the other \*\*\*\*\*.

The ownership of the minerals after severance is to all intents and purposes the same as ownership of the land and is attended with all the attributes and incidents peculiar thereto."

(58 C.J.S. Mines & Minerals, §156, p. 328)

If the mineral rights are severed from the surface rights, then such property should be listed and assessed to the person owning, claiming or having possession, charge or control thereof.

It is stated in 84 C.J.S. Taxation, §68, p. 173, that where there has been a severance of ownership of the minerals from the land, each owner should pay taxes on his severed portion, and the mining rights or minerals in land may be severed from the surface rights or from the general ownership in fee, and thereupon become separately taxable to their owner as real estate. It is further stated that the reservation of minerals and the right to mine them constitutes taxable property, and unless made taxable as personalty by statute, has been held taxable as an interest in land, even if only of nominal value, and in the absence of positive proof that minerals are present.

Several cases have passed upon this issue and the one most closely in point is Union Pacific R. Co. v. Hanna, 73 Colo. 162, 214 Pac. 550, which holds that an oil, coal and mineral reservation is an interest in land assessable under the laws of Colorado. In that case the Union Pacific Co. sold a great deal of acreage with the reservation of oil, coal and other minerals. The county assessor assessed the mineral interests and the railroad filed objections asking that the assessments be eliminated. The railroad contended that there was no showing that the lands contained minerals and that their value, if any, was nominal and not subject to taxation. The court stated:

"That mineral reservations, not being exempt by Constitution or statute, are assessable under the laws of this state is beyond question, even if they are of a nominal value only. A mineral reservation is an interest in land, and is 'real estate' by the very terms of our statute. \*\*\*\*\*

\*\*\*\*\* That they do not contain minerals would not, \*\*\*\*\* make the reservations valueless, or not subject to assessment. The only bearing, if any, that the non-existence of minerals would have upon the question for decision is as to the value, not the assessability, of the reservations. \*\*\*\*\*

\*\*\*\*\* The mere fact that the plaintiff reserved these rights, \*\*\*\*\* is some evidence that the reservations are valuable. \*\*\*\*\*"

It might be noted at this time, although not fully adopted by the Colorado Court in the Union Pacific Co. case, that an Iowa Court said that when it is made to appear that the existence of such minerals is a mere matter of conjecture, the minerals reserved may not be assessed beyond a mere nominal sum (as \$1). (In re Appeal of Colby, 184 Iowa 1104, 169 N.W. 443) The Union Pacific Co. was attempting to use this case to minimize the importance of such reserved mineral rights.

Other courts have said the following regarding the taxation of severed mineral rights:

"\*\*\*\*\* the public policy of the state (New Mexico) as shown by the statutes referred to and facts related, is to tax separately the severed mineral rights from the remainder of the fee when in different ownerships."  
Sims v. Vosburg, et al, 43 N.M. 255, 91 P.2d 434.

"It is settled that a landowner may sever his estate in the oil and gas from his estate in the remainder of the realty. \*\*\*\*\* The estates so severed are regarded as entirely separate and distinct. They are taxable as separate real estate." Watkins v. Certain-Teed Products Corp., Tex. Civ. App., 231 S.W.2d 981.

The only question left for determination in this opinion is whether or not the reserved mineral rights should be taxed as "real estate" or "personal property" under Arizona law. The definitions, for taxation purposes, are set forth in A.R.S. §42-201, as follows:

"1. \*\*\*\*\*

2. 'Personal property' includes property of every kind, both tangible and intangible, not included in the term real estate.

3. 'Real estate' includes the ownership of, claim to, possession of or right of possession to, lands or patented mines.

4. \*\*\*\*\*"

Since the grant or reservation of mineral rights constitutes a grant or reservation of an estate or interest in the land, 58 C.J.S. Mines & Minerals, §157, p. 329, it would appear that such rights should be assessed as "real estate" under the Arizona Taxation Statutes.


Assessments under A.R.S. §§42-227.01 through 42-227.04 would have no application to the issue at hand, for the reason that these

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sections apply to the assessment of "producing oil and gas interests."

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